CERTIFIED SECURITIES

The success of recent legislation on the subject of pure food has raised the question whether shares, stock and company securities may not be pasteurized by enactments of the legislature. It seems doubtful; attempts do not appear to be effective. Food is material which may be standardized, analyzed, and readily shown to be what it is represented. Company securities are contracts.[1] They represent the interest of holders in property dealt with by the company and the directors. To the contracts must be added motives, intentions, and human frailties. Long ago it was aptly said by a learned chief justice that "the thoughts of a man are not triable." Neither can motives and intentions be standardized or analyzed. The motives of man cannot be subjected to microscope, blow pipe, or test tube. The results alone can be dealt with, and the measures under consideration are those to prevent the usual results. As the contract which underlies a company security is complicated—it consists of the statute giving the company existence, the charter, the articles or by-laws, as well as the certificate itself—so the means by which beneficial results may be obtained by the holders and the methods of fraud and oppression towards them are complicated.

Definite fraud need not be discussed. The criminal code and the postal regulations meet it. The causes of loss to the public through company investments are many and varied, well-intentioned blundering, self-interested management, oppressive control by majorities, watered stock, and many others. It is needless to enumerate the means by which the company-wrecking expert may attain his end, as it is useless to define fraud or list the methods of accomplishing it. Nevertheless, it may be confidently stated that through adequate legislation the charter and the documents of a company may be so framed that protection may be afforded those who look for it. A superficial study of a few typical bits of legislation devised for the purpose of giving protection to the investing public may throw light on their defects and misdirected good intentions.

An extract from the constitution of the state of Arizona, one of the most recent, is worthy of consideration. Article XIV, sec. 4, is as follows: "No corporation shall engage in any business other than that expressly authorized in its charter or by the

[1] *Borland's Trustee* v. *Steel Bros. Co.* (1901), 1 Ch. 279.

law under which it may have been or may hereafter be organized." If this section is intended to be declaratory of the law, as it stands under jurisdictions where the common law prevails, no comment need be made except that it may limit the existing law. The rule has been fully laid down in many well-known cases.[2] But without legislation the principle has been extended by the courts.

In New South Wales a company[3] was formed for the sale of preserved meat, fish, vegetables, etc. The greater part of the shareholders were graziers, and the directors, supported by a large majority of the shareholders, converted the company practically into a graziers' protection society; that is to say, instead of carrying on the business so as to make profits by dealing in meat and other animal products and distributing these profits in dividends, they managed the company to keep up the price of stock—their *modus operandi* being to give prices at auction sales of stock above those at which they might have purchased and thereby benefit the grazier shareholders in the concern. This was a clear fraud on the non-grazier minority. It was argued that it was a mere question of internal administration in which the majority had a right to control the policy of the company; but it was far more than that. The directors, as Simpson, C. J., said,

> were not carrying out the purposes for which the company was formed, but were using the machinery and property of the company for purposes of an entirely different nature—to keep up the price of stock in the interests of the grazier majority, disregarding the making of profits altogether. And this no directors, even though backed by a majority of shareholders, can do. The powers given to directors by the constitution of a company, however absolute in terms, are always to be construed as subject to a paramount and inherent restriction that they are to be exercised in subjection to the special purposes of the original bond of association.

Whether a similar result would follow in Arizona is arguable. But the section is subject to the comment that it appears to afford protection, which is fully given:

> No corporation shall issue stock except to bona fide subscribers therefor or their assignees; nor shall any corporation issue any bond or other obligation for the payment of money except for money or property received or for labor done. . . . All fictitious increase of stock or indebtedness shall be void (sec. 6).

This clause is undoubtedly aimed at what is known as stock

[2] *Ashbury Railway Carriage & Iron Co.* v. *Riche* (1875), L.R. 7, H.L. 653.

[3] *Miles* v. *The Sydney Meat Preserving Co., Ltd.,* 12 State Reports (New South Wales) 98.

watering, but it is doubtful whether it accomplishes this purpose. Similar clauses appear in the constitution of many states.[4]

In the state of Vermont the issue of shares for property is subject to approval by the shareholders.[5] In many states this clause is varied and the property or labor shall be taken only at the market price,[6] and in others at the cash value, actual value, or fair value.[7] It is difficult to see how market price, cash value, and value can be differentiated. Nevertheless, this has been attempted by the courts,[8] with the result that the mass of decisions are bewildering and conflicting. In the state of Alabama a further safeguard is added,[9] and the particulars of the property and labor to be acquired by the company must be set out in the share subscription list. In Iowa added precautions are taken, and where shares are allotted for property or labor, permission so to do must be given by the executive council of the state, which, if necessary, may make an investigation and ascertain the real value of the property to be transferred.[10] In the state of Virginia[11] the issue of shares for property or service is subject to the approval of the state corporation commission. In the state of Connecticut[12] a formal minute signed by the majority of the directors duly recorded must show the particulars of the property received for shares issued, and a declaration must be made that it has a value equivalent to the shares issued. In many states, however, there is no such restriction, and the judgment of the directors, except in cases of fraud, is held binding.[13]

It is unnecessary, however interesting, to investigate the laws of all the states on this subject or to harmonize the decisions[14]

[4] Alabama Const, ¶ 234; Arizona Const., Art. 14, sec. 6; Arkansas Const., Art. 12, sec. 8; California Const., Art. 12, sec. 11.

[5] L. 1910 No. 143, sec. 6.

[6] Kentucky Civil Code, 1906, sec. 2154; Const. sec. 193.

[7] South Dakota Const., Art. 17, sec. 8; Rhode Island G.L., ch. 214, sec. 8.

[8] *Altenberg* v. *Grant* (1898), 85 Fed. Rep. 345 (Kentucky); *Dailey* v. *Foster* (1913), 134 Pac. Rep. 206 (New Mexico).

[9] Const., p. 234.

[10] Code of 1897, sec. 1641 (b); added to by 32 G.A., ch. 71, sec. 1; and amended by 34 G.S. ch. 76.

[11] Const., sec. 167.

[12] P.A., 1903, ch. 194, sec. 12.

[13] Delaware Corp. Law, 1899, sec. 14; amended by 23 Del. Laws, ch. 155; Maine R. S., ch. 47, sec. 50; South Dakota Const., Art. 17, sec. 8; Civil Code, sec. 423; Laws, 1907, ch. 104; West Virginia Code, ch. 52, sec. 24.

[14] Spargo's Case (1873), L.R. 8 Ch. 407 (English); *Laroque* v. *Beauchemin* (1897), A.C. 358 (from Quebec); *Altenberg* v. *Grant* (1898), 85 Fed. Rep.

thereon or to deduce the underlying principles involved. It may, however, be said that these enactments have not attained their object or prevented loss to investors through stock watering.

A novel method of meeting in apparently a business way the difficulties of watered stock is that enacted by the state of New York,[15] which provides for the issue of shares without par value, without the dollar mark; that is, shares representing not an amount of money of the total capitalization of the company but an undivided proportion of the undertaking. This provision does not apply to moneyed companies nor companies under the Public Service Commission. Neither does it apply to preferred shares. The amount of capital with which the company will carry on business, not less than the amount of the preferred stock and a sum equivalent to five dollars or some multiple of five dollars for every share authorized not less than five hundred dollars, shall be set out in the charter. The share certificates must show the number of shares thereby represented and the number authorized, and shall not show the par value thereof. The company may issue and sell for such consideration as may be prescribed in the charter, or as may be fixed by the board under authority of the charter, or, if there is no such provision, as two thirds of the shareholders may direct. The company may not carry on business or incur debts until the capital fixed for that purpose is paid up in cash or in property at its actual value. No dividend may be paid which may reduce the capital below the amount fixed in the charter. There are further provisions regulating the increase in the number of shares.

This method was first suggested at a meeting of the New York Bar Association at Buffalo in 1892. It was proposed as a remedy for stock watering before the Industrial Commission by Mr. Francis Lynde Stetson in 1899[16] and was introduced in the proposed Federal Incorporation Act, 1910. It was approved by the Railroad Securities Commission 1911 (sec. 20). Where the shares of companies are quoted upon the stock exchange and their value is thereby fixed, this method may afford relief to the public and the companies requiring further capital. But when the well-

345 (Kentucky); *Grant* v. *East & West R. Co. of Alabama* (1893), 54 Fed. Rep. 569 (Alabama); *Lake St. Elevated Ry.* v. *Ziegler* (1900), 99 Fed. Rep. 114 (Illinois); *Brown* v. *Duluth M. & N. Ry. Co.* (1893), 53 Fed. Rep. 889 (Minnesota); *R. H. Herron* v. *Shaw* (1913), 133 Pac. Rep. 488 (California).

[15] Laws of the State of New York, 1912, ch. 351.

[16] Industrial Commission Report, vol. I, p. 976.

known methods of "rigging the market" are considered this seems doubtful. It will be noted that the act does not require publicity of former transactions, contracts, promotion expenses, commissions, or other details of business dealings of the company which should be given to enable the public to judge of the value of the shares. The act is untried and should perhaps be left for future criticism. It may, however, be said that for new flotations it does not appear to give adequate relief. The clause regulating dividends appears to be superficial. There are no checks upon the valuation, and intangible assets may be introduced to justify any dividend.

The laws of many states impose restrictions upon the commencement of business. In Illinois[17] the total capital must be subscribed. However, this statute is easily evaded by incorporating the company with small capital which may be increased without the original restriction. In Connecticut[18] the amount of capital with which the company may commence business must be set out in the certificate of incorporation, and the directors must file a return showing the amount subscribed, the amount paid thereon, the amount paid by the transfer of property and the amount paid each share not paid in full. In Kentucky[19] fifty per cent of the capital must be subscribed before the company may commence business. In many states the amount is nominal, and in many others there is no provision.

Undoubtedly the evil of watered stock has been the most conspicuous practice sought to be remedied. However, in many states special penal legislation has been enacted as sanctions in company wrecking. In Arizona[20] and California[21] it is a penal offence to make a fictitious subscription for shares. Such an act is a common law forgery, the making of a false document, and the penal provision adds little. Many other improper acts are subject to the penal codes, such as payment of dividends except out of profits, the issue of statements for the purpose of bearing stock, the issue of false statements and prospectuses. In many states annual returns, verified by oath, showing the financial state of the company are required.

It may be fairly stated that, while many of the above enact-

[17] Gen. Corp. Law, 1872, sec. 3.

[18] P.A., 1903, ch. 194, sec. 69; amended P.A., 1909, ch. 160.

[19] Statutes Kentucky, 1909, sec. 2127.

[20] Penal Code, sec. 503.

[21] Sec. 559.

ments, and many more not referred to, may check the evils at which they are aimed, the existing evils of company promotion and management are great, and public opinion demands greater safeguards for investors. That this is the existing state of affairs is undoubtedly shown by the demand for the Kansas Blue Sky law which at the outset was thought to be a remedy for existing evils.

The Kansas Blue Sky law[22] was passed in the year 1911 and through extensive advertising came to be considered the panacea for fraudulent and improvident flotations. It has been considered by the legislatures of 34 states and adopted by 22 and by one Province of Canada. This law has been declared unconstitutional in the states of Iowa and Michigan, and proceedings for such a declaration are pending in other states. An examination of the administration of the law in Kansas shows that it is unworkable. The report of the state banking commissioner, published Sept. 1, 1912, states as follows:

> Between fourteen and fifteen hundred companies have been investigated by this department since the enactment of this law, and of this number less than one hundred have been granted permits to sell their securities in Kansas. The law is rapidly gaining fame all over the civilized world, and I believe that a large number of states will adopt a similar law at the coming sessions of their legislatures.

A personal investigation of the files of the bank commissioner's office casts serious doubts upon the accuracy of this statement. It appears that down to April 1, 1913, permits were granted to 49 companies and refused to 62. The balance were held for consideration, and in some cases temporary permits were granted on the personal authority of the commissioner, such authority not being given by the law. It is well known that serious frauds were committed through these temporary permits.

The method of the law needs only a word of explanation. Every company, domestic and foreign, before being entitled to sell any of its securities or those of other companies within the state, must produce to the commissioner a statement of its affairs, plan of development, and such other information as may be required, and the commissioner must sanction the plan of business before the permit is granted. This method was considered and dealt with by a commission of the British Board of Trade appointed to report upon company legislation and is referred to later.

A pertinent example of the result of this method is shown in the bill recently before the Parliament of Canada for the relief

[22] Laws, 1911, Cap. 133; amended, 1913, Cap. 145.

of the depositors of the Farmers Bank. Under the Canadian bank act, after incorporation by special act of Parliament the promoters, under regulations, must show that adequate capital has been subscribed before a certificate to do business may be issued by the Treasury Board. The manager of the bank misled the board, and the certificate was issued. An investigation by a learned judge showed that although the certificate was obtained by misrepresentation, the bank might have been a success but for the speculation and reckless dealings of the manager. Nevertheless, through political influence the depositors of the bank induced the government of Canada to introduce before Parliament a bill for the contribution of $1,300,000, or thereabouts, for the relief of the depositors who lost in the crash. The bill passed the House of Commons, but was thrown out by the Senate.

The working of the law may not have extended sufficiently long to show its good features. It is very unlikely, however, that good features may be disclosed, since the unworkable nature of the law was immediately apparent. There is one provision of the law which has worked effectually and has led the people of Kansas to believe that the measure is sufficient for all purposes. It is that which requires itinerant vendors of securities to procure certificates from the banking commission before they can carry on their business. This feature of the law has been adopted in Louisiana.[23]

The English Act of 1862,[24] the basis of existing legislation, made no provision respecting the prospectus, the payment of dividends, nor the payment of shares. These subjects were regulated by the articles of association. The Act of 1867[25] provided that every share shall be deemed and taken to have been issued and to he held subject to the payment of the whole amount in cash unless otherwise determined by a contract in writing registered with the registrar of companies before the issue of the shares. This statute[26] also made the first provision respecting the prospectus and required that the dates and names of all parties of contracts made by the company, promoters, directors or trustees made before the issue of the prospectus should be set out therein; and it was further provided that if the names and date were not so set out, the prospectus was to be deemed fraudulent on the part of the promoters, trustees, directors, or officers of the company

[23] Statutes of Louisiana, 1912, Act. 40.

[24] 25-26 Vict., c. 89.

[25] 30-31 Vict., c. 131, s. 25.

[26] Sec. 38

knowingly issuing the prospectus, as regards persons taking shares, unless the shareholder had notice of the contracts.

The next pertinent legislation was the Directors Liability Act of 1890,[27] which made promoters and directors liable for untrue statements contained in a prospectus, with certain limited and defined exceptions, unless such director withdrew from the company before the issue of the prospectus, or if the prospectus was issued without his knowledge or consent, or if after the issue and before allotment of shares he gave public notice of his withdrawal and the reasons therefor.

It is unnecessary to follow the course of the decisions of the courts upon these provisions in detail. The clause respecting payment of shares in cash was soon limited and held not to apply to cases where a debit and credit existed at the time of the issue of the shares;[28] and where no contract was filed, the courts, if satisfied that conditions were not prejudiced, before winding up directed a rectification of the register so that the contract might be filed. By the Act of 1898[29] the courts were authorized to grant relief when it was shown that the omission to file the contract was accidental or due to inadvertence.

During the carnival of flotations about the year 1890 and thereafter by Hooley, Whitaker Wright and others of this class, it was apparent that these provisions gave no substantial protection to the public. The causes of complaint were many, and amongst them were: promotions by dummy directors, the padding of the purchase money, stock watering, undue and secret profits to promoters, defeat of creditor by floating charges, and abortive enterprises where subscribed capital was devoted to promotion expenses and the company doomed to failure on account of inadequate capital.

The first move to remedy the situation was the appointment of a commission by the Board of Trade to study existing legislation and suggest improvements. This commission took evidence of experts—lawyers, accountants, and others—studied foreign legislation, and took suggestions from chambers of commerce and other similar bodies. The report was made in 1895, and a bill was suggested.[30] A pertinent clause of the report is as follows:

[27] 53 and 54 Vic., c. 64.
[28] Spargo's Case (1873), L.R. 8 Ch. 407.
[29] 61 and 62 Vict., c. 26.
[30] Parliamentary Papers, Cd. 7779.

Your committee may observe that they have dismissed from their consideration every suggestion for a public inquiry by the registrar or other official authority, into the soundness, good faith, and prospects of the undertaking at this or any other stage of a company's formation. To make any such investigation into the position of every new company complete and effectual would demand a very numerous staff of trained officers, and lead to great delay and expense, while an incomplete or perfunctory investigation would be worse than none. It would be an attempt to throw what ought to be the responsibility of the individual on the shoulders of the state, and would give a fictitious and unreal sense of security to the investor, and might also lead to grave abuses.

Subsequently, the bill was twice introduced by the House of Lords,[31] again amended, and finally passed in 1900. Its provisions will be more fully considered in dealing with existing legislation, but here it should be mentioned that this legislation was in its most important provisions, that relating to the prospectus, a complete failure.

The act required the company to file a prospectus only when itself offering shares or securities to the public, and was readily evaded by the company alloting the shares and securities to underwriters who were not subject to the provisions of the act. The evils of fraudulent and flamboyant prospectuses were not abated. This state of affairs continued to the year 1907 when the amendment, subsequently reënacted in the Consolidation of 1908, was passed.

According to present English legislation for purposes of control, companies are divided into two classes, private and public.[32] Private companies are those which limit the transferability of shares, limit the number of shareholders other than employees or ex-employees to fifty, and prohibit the offer of shares or securities for public subscription. These limitations are enforced by means of sworn annual returns to the Registrar of Companies and penalties. Public companies are those to which the above limitations do not apply, and the main methods of control are through the prospectus, the minimum subscription, the statutory meeting, and the filing of charges and mortgages.

The definition of the prospectus[33] includes all published or cir-

[31] H. L. Committee Report Companies Bill 342, 1896; 384, 1897; 392, 1898; Parliamentary Papers, Cd. 3052, 1906; H. L. Committee Report Companies Bill 310, 1907; Report Joint Committee H. L. & Commons; Companies Bill 252, 1908.

[32] Companies Consolidation Act (1908), sec. 121.

[33] Sec. 285.

culated notices or invitations for subscriptions for shares or securities. It must be signed by all persons named as directors, filed with the Registrar, must bear the date of filing, and state that it is filed.

The contents of the prospectus[34] must show particular and definite details of the organization and promotion of the company, the contents of the memorandum of association, which corresponds to the charter under American legislation, showing the names and addresses of the applicants for incorporation and the number of shares taken by each, the classes of shares, the qualification and remuneration of directors, the names of the directors, the minimum subscription (of which more hereafter), the number and amount of shares and securities issued otherwise than for cash during the preceding two years, the names of vendors of property to the company—and the term "vendor" is extended to include any person who has entered into a contract of sale to the company or for the sale of property to be acquired by the company when the purchase price is not paid at the issue of the prospectus, or when the purchase price is to be paid out of the issue, or when the completion of the contract is dependent on the result of the issue.

The prospectus must also show the amount payable for the purchase of property in cash, shares, or securities; the amount paid during the past two years for commissions on the sale of shares or securities; the probable amount of the promotion expenses; the amount paid or payable to promoters; the names, dates, and particulars of all contracts entered into on behalf of the company, and the place where copies may be inspected; and the interest of each of the directors in the promotion or in the property acquired or proposed to be acquired by the company. By means of the prospectus an intending investor is enabled to see the truth of the promotion in all details.

One of the most important of the above provisions is that which relates to the minimum subscription. It is undoubtedly true that there is as great or perhaps greater loss to the public through sanguine flotations as through those which are fraudulent. The minimum amount of capital with which the company proposes to do business must be disclosed in the minimum subscription, and the prospectus should fix such an amount as will appeal to an investigating investor. If the amount be too high, there may be difficulty in reaching it, and if too low, the fact that the company

[34] Sec. 81.

may be launched without adequate capital is disclosed. This is for investors to judge.

The investor is further protected[35] by the provision that the company cannot do any business until the minimum subscription is reached and paid in cash, and the courts have enforced this provision to the extent that it has been held that a check which has not been certified is not within the meaning of the provision for payment in cash.[36]

On the minimum subscription being reached, a return of allotment[37] must be made to the Registrar, showing that all requirements of the act have been complied with, and a certificate to do business is issued. If the amount named in the minimum subscription is not subscribed within forty days,[38] the amount of all subscriptions must be returned to the subscribers; and if the amount is not repaid within forty-eight days, the directors are jointly and severally liable for the amount.

Further protection is provided by the statutory meeting[39] of shareholders, which must be held, after due notice, not less than one nor more than three months after the time the company is entitled to do business. With the notice calling the members, the directors must forward a report certified by the auditors showing the shares allotted for cash and for property and services and the amount paid thereon, the total amount received by the company in respect of shares and debentures, payments made thereout, and the preliminary expenses. This statement must be made as of a date not earlier than seven days before the meeting. At the meeting the shareholders may discuss any matters arising out of the formation of the company, and the meeting may adjourn from time to time. If default is made in making the report and holding the meeting, the company may be wound up; and if an allotment of shares is made contrary to the provisions respecting the minimum allotment, a subscription for shares is revocable within one month after the statutory meeting.

The Act of 1900 contained these provisions and was nevertheless found to be of little protection to the investor. Under the

[35] Sec. 87.

[36] *Mears* v. *Western Canada Pulp and Paper Co.* (1905), 2 Ch. 353. *Glasgow Pavilion Co.* v. *Motherwell* (1903), 6 F. 116. *In re National Motor Mail Coach Co.* (1908), 2 Ch. 228.

[37] Sec. 88.

[38] Sec. 85(4).

[39] Sec. 65.

Act of 1908, sec. 82, a public company which does not sell its shares directly to the public, but through underwriters in the manner in which the former act was evaded, must file a statement in lieu of a prospectus which must contain all the information required in the prospectus.

It is not possible within the limits of this article to enumerate all the causes of loss to company investors, but it may be of interest to consider the most important and apply some of the legislation referred to.

It is submitted that existing penal legislation—against theft by trustees, secret commissions, forgery, and improper use of the mails—is ample. Theft has been a crime since the rights of property were established and theft is still practiced. While companies exist, the graver crimes will continue.

These penal provisions may be effectively assisted by clauses similar to those of the Kansas Blue Sky law which required itinerant vendors of securities to obtain licenses from proper authorities to permit them to carry on their business. These clauses are effective for two reasons. The authority issuing the license may exercise some supervision without incurring any responsibility or offering any undue security to the investor; and the person with fraudulent securities would be deterred from seeking a license; or if he obtained one and it became known that he was offering fraudulent securities, the license could be cancelled.

While the loss to the public through crime and fraud in company management is great, there appears to be no doubt that loss through over-sanguine and ill-considered flotations is greater. This kind of loss does not arise from fraud or crime, but from bad business methods. For this reason the check should not be by legislation directed against the methods used. Good business methods cannot be prompted by legislation for the same reason that morality cannot be so enforced. The check upon bad business methods is publicity, frank disclosure, and opportunity for discussion by those interested. The prospectus, minimum subscription, and statutory meeting of the English act appear to meet this. It affords the investor who desires to ascertain the true inwardness of a flotation all that a business man may require to judge of the probable success of the enterprise. For those who will not investigate there need be no complaint.

Watered stock may be an evil if secretly and fraudulently brought about. But it seems to be a public business necessity, and

if openly dealt with may work no wrong. Modern enterprise demands rewards and is thereby incited. It is needless to instance many well-known enterprises which in the foresight and good management of their promoters have proved the value of capitalization on expected profits and economy of management. When the details are published and an investor has an opportunity of judging for himself, no wrong is done, and if the expectations of profits are not realized, no one should be blamed. It is not the "watering of stock" that should be prohibited, but the methods which bring about secret profits which should be condemned.

While loss through fraud and other methods referred to are substantial, the loss which the subjected minority may bear in a profitable enterprise is greater, if not to the pocket, to the feelings of that great and often-heard person, the minority shareholder. Some attempts have been made to legislate on his behalf. When he has permitted himself to be a pawn in the game, proxies have been regulated. In many jurisdictions cumulative voting for directors is authorized. However, it may be confidently affirmed that the minority shareholder, if he has grounds for complaint, owes them to his own stupidity or unbusinesslike methods. There may be an exception to this statement. The laws of company organization and management are modern, and the rights of shareholders have not been completely declared by the courts. It may be more profitable and more to the peace of mind of the minority holder to submit to his loss than to assert his rights before the courts. In the evolution of modern company methods no doubt the position of the minority holder may be improved, and it is better and surer to await the natural development of the law than to resort to cumbersome and likely ineffective devices of special legislation.

This may appear severe upon the minority holder and require explanation. The law of partnership is well established, and the business man who suffers a loss through the exactions or overbearing methods of a partner receives little sympathy. Why then should the minority holder in a company which may be established with all the safeguards of a partnership be the subject of sympathy? The methods of suppression of the minority holder are varied, but those likely to happen in each may be foreseen and remedied. These methods apply to successful companies. In the losing, his loss is the lesser.

The methods of tiring out the minority holder are various,

However, their result is the withholding of dividends. It may be accomplished by rolling up a surplus, and, unless regulated, this is in the discretion of the directors.[40] It may be by making a contract with a subsidiary company for the sale of products, the profits being taken by the subsidiary. In small concerns the profits may be absorbed by salaries. A profitable enterprise with larger prospects may be sold out to a new company promoted by the majority. Many other methods could be cited, and there is but one answer. They may all be controlled by the charter, articles, or by-laws. Salaries may be limited. Dealings with subsidiary companies for the purpose of withholding profits may be regulated. Methods of accounting may be devised whereby dividends may not be withheld. A sale of the undertaking may be prohibited except with unanimous consent. A shareholder has a contract with the company which is made up of the statute, charter and articles or by-laws. These may be framed so that exactions or overbearing methods of the majority may be eliminated.

A person purchasing real estate would not part with his money without a careful scrutiny of the title and a report from his solicitor. He knows full well the difficulties of real property law, and he knows that his rights are well defined. The public has been dealing with real property for such a time that the necessity for care is ever present. Companies and company law are modern. The public has largely been made to believe that the company is the creation of the state and that the state will protect him. The state creates the rights of real property and nevertheless leaves the individual to his rights. When the public recognizes that business forethought is as much required in company investment as in the purchase of real property, certified securities will be attained.

This end may be reached not by superficial and inadequate enactments of the legislature but by publicity and by enabling the investor to study his investments and exercise business methods.

THOMAS MULVEY.

Ottawa.

[40] *Burland* v. *Earle* (1902), A. C. 83.